MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY
FINAL EXAMINATION

TRIMESTER 1, 2022/2023 (TERM ID 2210)

ULV4612 - LAW OF EVIDENCE I

(All Sections / Groups)

15 FEBRUARY 2023
Reading Time: 9.00am – 9.15am (15 Minutes)
Answering Time: 9.15am – 12.15pm (3 Hours)

INSTRUCTIONS TO STUDENT:

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages and is divided in to 2 parts **(Part A and Part B)**. There are 2 questions in Part A and 3 questions in Part B.

3. Students are required to answer only **1 question in Part A (answer either Q1A or Q1B) and answer ALL 3 questions in Part B.** All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall only a CLEAN and ORIGINAL copy of the:
   i. EVIDENCE ACT 1950
   ii. EVIDENCE OF CHILD WITNESS ACT 2007; and
   iii. CRIMINAL PROCEDURE CODE
   (Students are not allowed to lend or borrow statute(s) during the Examination. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.)

5. Please write all your answers in the Answer Booklet provided. Your answers must be supported with relevant statutory provisions and cases.

PART (A)

Answer only 1 question in Part A.
Answer either Question1(A) or Question 1(B).

QUESTION 1 (A)

"We are of the view that the conduct of the appellant, viz, in picking up the said biscuit tin and handing it to SP4 in response to her request to hand over any prohibited item in his custody or under his control amounts to a statement which falls within the contemplation of s. 37A of the Act. We do not agree with the views of Nik Hashim J as expounded in *Public Prosecutor v. Kanapathy a/l Kupusamy & Anor* [2001] 1 CLJ 61 HC that the word "statement" appearing in s. 37A of the Act is "confined to something that is stated orally or in writing". We are of the view that the word "statement" appearing in s. 37A of the Act must be construed as including actions.... In the instant appeal, we are of the view that the action of the appellant in picking up the said biscuit tin which contained the dangerous drugs in question is a statement within the contemplation of s. 37A of the Act"

(Per Mohd Ghazali Yusoff JCA in *Y Jeyamuraly Yesiah v PP* [2007] 5 CLJ 605, CA)

Evaluate critically, the above statement based on the interpretation of section 37A of the Dangerous Drugs Act 1952 which has since been renumbered to section 37B of the Dangerous Drugs Act 1952 (*vide Act A1457 of 2014*).

(Total: 25 marks)

QUESTION 1(B)

"But there is a limit to what the prosecution could or could reasonably be expected to prove. There are situations where it is clearly sensible and reasonable that deviations should be allowed from the strict applications of the principle that the prosecution must prove the defendant's guilt beyond reasonable doubt."

(Per Jeffrey Tan FCJ in *Public Prosecutor v Gan Boon Aun* [2017] 3 MLJ 12)

Based on the above excerpt, evaluate the circumstances where the burden of proof lies on the accused person in a criminal trial.

(Total: 25 Marks)

Continued...

PART (B)

Answer all 3 questions in Part (B)

QUESTION 2

On 30 January 2019, Mike the plaintiff while riding a motorcycle (Registration No. AMJ xxx) was involved in an accident with a car (Registration No WRP xxxx) driven by Rob, the defendant at the junction of Jalan Ayer Keroh Lama and Jalan Sungai Putat. As a result of the impact Mike was thrown of his motorcycle and suffered a broken right thigh, multiple lacerations to his arms and a crack to the frontal area of his skull. Based on the above facts the plaintiff commenced a tortious claim for special and general damages against the defendant. During trial the following evidence was adduced by the plaintiff:

a. the evidence of Jack ("SP2") who is the plaintiff's uncle. SP2 who had arrived at the scene of the accident some 15 minutes later, testified on statements made to him by bystanders. He testified that he was informed by the bystanders that the defendant driving a car with the registration no WRP xxxx was involved in the accident, and that he had fled the scene. None of the bystanders have been called as witness as their identity is not known;

(10 marks)

b. a medical report prepared by Dr Tun Naing a Burmese doctor who had examined and treated the plaintiff at the Melaka General Hospital. Dr Tun Naing has since returned to Myanmar following the expiry of his contract with the government of Malaysia and is currently unreachable;

(7½ marks)

c. a letter from the defendant's solicitors to the plaintiff wherein the defendant admitted liability, which was exchanged during a failed attempt to reach a settlement between the parties.

(7½ marks)

Analyse the admissibility of the above evidence during trial.

(Total: 25 marks)

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QUESTION 3

A and B were jointly charged with the murder of X. The prosecution alleged that the offence was committed between 9 pm on 10 July 2019 and 9pm on 11 July 2019 at a flood retention pond besides the Putrajaya-Cyberjaya highway in Sepang, Selangor Darul Eshan. Analyse the relevancy and admissibility of the following evidence adduced during trial:

a. testimony from X's brother (PW2), that X was seen at their family durian orchard with two male strangers at about 7pm on 10 July 2019. PW2 later saw them driving off in a red Pajero and that was the last time he saw X alive. PW2 was able to identify both A & B as the two male strangers during the trial. According to PW2, he was able to identify them because of the moonlight and his own torchlight. He also claimed that he was able to see them for almost five minutes before they drove off together with X. During cross examination by the defence counsel PW2 admitted that he had not identified B during an ID parade conducted on 11 September 2019.PW2 further testified that he was only able to identify A during the ID parade as he had seen A, a second time when the police had brought him to the durian orchard on 7 September 2019 in the course of the investigation;

(10 marks)

b. testimony from Inspector Ali (PW1) that A had tried to resist arrest and attempted to escape before he was apprehended;

(5 marks)

c. testimony from PW3 (ASP Keane) that during interrogation conducted after arrest, B had voluntarily given information that he had thrown certain personal items belonging to X in a monsoon drain in Cyberjaya. Based on this information, the police conducted a search of the monsoon drain in Cyberjaya. The search however was not successful as no personal items were recovered from the monsoon drain. The accused did not lead the police to the monsoon drain and was not present during the search.

(10 marks)

(Total: 25 marks)

QUESTION 4

Shamsul has been charged under s 17(b) of the Malaysian Anti-Corruption Commission Act 2009 for corruptly offering a gratification in the form of cash money of RM5,000.00 to one Iskandar (PW1) who is an Immigration Officer. During the trial, PW1 testified that on 2 December 2022, a joint operation was conducted with the Malaysian Anti-Corruption Commission (MACC) to inspect foreign workers working at constructions sites. A team of officers from the Immigration Department led the operation while MACC officers would intervene if there was any offence committed under the MACC Act 2009.

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PW1 further testified that Shamsul was the supervisor at a construction site they inspected located in Durian Tunggal. During the inspection, they found about 5 foreign workers at the site without proper documentations. Shamsul begged that no action to be taken against the workers and informed PW1 that he was willing to negotiate to settle this issue. PW1 warned Shamsul they were here to carry out their duty and it would be illegal for him offering a bribe to government officers. Shamsul ignored the warning and immediately took out a fold of money from his trouser pocket and uttered "I have RM5000.00 here, Tuan". At this moment, the MACC officers led by Assistant Commissioner Faizal (PW2) arrested Shamsul and seized the money (Exhibit P2). Exhibit P2 adduced to the Court was in the form of 50 pieces of RM100 notes denomination. However, seizure list (Exhibit P3) adduced by the Prosecution showed that the money was in the form of 49 pieces of RM100 notes denomination and 2 pieces of RM50 notes denomination. The Defence counsel for Shamsul in the cross-examination of PW1 suggested that Exhibit P2 adduced to the Court was not the same money seized on that day. PW1 denied this and claimed there was a typo error in the Exhibit P3. PW2 in his testimony also concurred with PW1 that all the money they seized were in RM100 notes denomination. At the end of the Prosecution case, the Prosecution submitted that a prima facie case has been established. Furthermore, the Prosecution argued that since the element of gratification has been proven, the presumption under s 50 of the MACC Act 2009 which presumes the gratification has been corruptly given is applicable unless the contrary is proved. The trial judge in the decision for calling Shamsul to enter his defence mentioned that although he has a slight doubt in the Prosecution's narrative, this doubt can only be dismissed or confirmed after giving the accused the chance to explain.

During the Defence stage, Shamsul gave the sworn testimony. He denied that he personally offered PW1 the money. He claimed that he offered the money because of an instruction given over phone by the site Manager by the name of Johari. Thus, he argued that he has no corrupt intention to bribe PW1. He also said that Johari went missing after the incident and cannot be called to testify as a witness for the Defence. At the end of Defence stage, the trial judge found Shamsul guilty and convicted him. In the judgment, the trial judge explained that since s 50 of the MACC Act 2009 has been successfully invoked by the Prosecution, the burden was upon Shamsul to rebut the presumption and prove his innocence. Since Johari failed to do these, he has no option but to convict him for the offence charged. Shamsul was not happy with the decision and has filed an appeal to the High Court.

Based on the above facts, analyse Shamsul's potential grounds of appeal.

(Total: 25 marks)

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